HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 21, 2015
84th Legislature, Number 54
The House convenes at 10 a.m.
Part One

Twenty bills are on the daily calendar for second-reading consideration today. The bills analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 54

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 21, 2015
84th Legislature, Number 54
Part 1

SUBJECT: Continuing the Department of State Health Services

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Raymond, Keough, S. King, Naishtat, Peña, Price, Spitzer

0 nays

2 absent — Rose, Klick

WITNESSES: For — Chase Bearden, Coalition of Texans with Disabilities; Debra King, Texas Academy of Nutrition and Dietetics; Susan Ross, Texas Dental Association; John Holcomb, Texas Medical Association; Kate Murphy, Texas Public Policy Foundation; Russell Graham, Texas Society for Respiratory Care; Brian Rich, Texas Society of Radiologic Technologists; (*Registered, but did not testify*: Grace Davis, Hays Caldwell Council on Alcohol and Drug Abuse; Andrew Brummett, Institute For Justice; Will Francis, National Association of Social Workers - Texas Chapter; Richard Briley, Texas Association of Municipal Health Officials; Nora Belcher, Texas e-Health Alliance; Scott Pospisil, Texas Hearing Aid Association, Inc.; Kenneth Besserman, Texas Restaurant Association; Daniel Schorre and Gaylene Lee, Texas Society for Respiratory Care; Tiffani Walker, Texas Society of Radiological Technologists; David Anderson, Texas State Athletic Trainers Association; and 11 individuals)

Against — Courtney Hoffman, Academic Language Therapy Association; Lee Spiller, Citizens Commission on Human Rights; Cindy Corley, Texas Environmental Health Association; ; Manuel Campos; Robin Cowsar; Rebecca Gould; (*Registered, but did not testify*: Larry Higdon, Texas Speech-Language-Hearing Association)

On — Cynthia Humphrey, Association of Substance Abuse Programs; Kathryn Lewis, Disability Rights Texas; Catherine Mize, Hanger Clinic; Gyl Switzer, Mental Health America of Texas; Katharine Teleki, Sunset Advisory Commission; Scott Jameson and Robb Walker, Texas Chapter of the American Academy of Orthotists and Prosthetists; Donald Lee, Texas Conference of Urban Counties; Lee Johnson, Texas Council of

Community Centers; George Ferrie, Texas Department of Licensing and Regulation; Mari Robinson, Texas Medical Board; Katie Brinkley; Mark Kirchner; Ray Smith; (*Registered, but did not testify*: Kirk Cole, Department of State Health Services; Kyle Janek, Health and Human Services Commission; Ken Levine and Erick Fajardo, Sunset Commission; Michael Kelley, Texas Department of Licensing and Regulation; Eric Woomer, Texas Dermatological Society)

BACKGROUND:

The Department of State Health Services was formed in 2003 when the 78th Legislature consolidated the Texas Department of Health, Texas Commission on Alcohol and Drug Abuse, Texas Health Care Information Council, and the mental health functions of the Texas Department of Health and Mental Retardation. The agency's mission is to improve health and well-being in Texas.

Functions. The agency's major functions include:

- preventing and preparing for public health threats;
- building capacity for improving community health by contracting with providers and funding local health departments;
- promoting recovery for persons with infectious disease and mental illness;
- protecting consumers;
- operating the state's public health laboratory;
- regulating and supporting development of the state's emergency medical services and trauma system;
- collecting, analyzing and disseminating public health data; and
- maintaining the state's vital records, such as birth and death certificates.

Governing structure. The executive commissioner of the Health and Human Services Commission (HHSC) appoints the commissioner of DSHS. A nine-member State Health Services Council appointed by the governor helps to develop rules and policies for the agency. More than 40 advisory committees and councils also provide the agency with advice and expertise on agency rules, policies, and programs. There are 11 additional governor-appointed boards that are administratively attached to DSHS and

which license and regulate certain health professions.

Funding. The 83rd Legislature appropriated $6.5 billion to DSHS in the fiscal 2014-15 budget, including $2.6 billion in general revenue funds, $956.2 million in dedicated general revenue funds, $2.5 billion in federal funds, and $539.2 million in other funds over the biennium. The 83rd Legislature appropriated about $456 million in additional general revenue funds to DSHS for the 2014-15 biennium, largely to support programs for mental health and substance abuse and women's health.

Staffing. In fiscal 2013, DSHS employed about 12,000 staff, most of whom work at the agency's state facilities, including nine state mental health hospitals. More than 2,600 employees work at the DSHS state headquarters in Austin.

DIGEST:

CSHB 2510 would continue the Department of State Health Services (DSHS) until September 1, 2027, unless other legislation that would transfer DSHS' functions to the Health and Human Services Commission (HHSC) is enacted or becomes law. If legislation transferring DSHS' functions to HHSC is enacted, the bill would abolish DSHS on September 1, 2015.

The bill also would:

- require the development of a mental health training curriculum for judges and attorneys;
- consolidate mental health and substance abuse hotlines;
- require an evaluation and refinement of the state's behavioral health contracting and performance measurement processes;
- require overhaul of regulations for community-based behavioral health treatment facilities;
- establish a new process for regionally allocating state mental health hospital beds;
- add requirements for the emergency medical services (EMS) industry;
- require DSHS to establish goals for the state's public health system and an action plan to meet the goals;

- require DSHS to develop a comprehensive inventory of the public health responsibilities of the state and each local health department, district, and authority;
- require identity verification to access vital statistics (birth and death records);
- continue the Texas Health Care Information Collection Program and repeal the separate Sunset date for the program;
- transfer certain occupational licensing programs to the Texas Department of Licensing and Regulation and reconstitute related boards as advisory committees;
- transfer certain occupational licensing programs to the Texas Medical Board and establish related boards and advisory committees; and
- discontinue various regulatory programs.

Mental health training curriculum for judges and attorneys. The bill would require the Department of State Health Services to work with the Court of Criminal Appeals to develop by March 1, 2016, a training curriculum for judges and attorneys about inpatient and outpatient treatment alternatives to court-ordering a person to be committed to inpatient mental health treatment in a state hospital. The mental health treatment alternatives would apply to a person who had been court-ordered to receive mental health services to attain competency to stand trial or following an acquittal by reason of insanity.

Community mental health programs. CSHB 2510 would require reviews of and changes to certain community mental health programs.

Behavioral health services provider contracts. The bill would require HHSC to conduct a strategic review to evaluate and improve the performance measures and payment mechanisms included in DSHS' contracts with providers of behavioral health services, including mental health services, substance abuse services, or both. The commission's review would be conducted in three phases with the assistance of a third party who had expertise in health purchasing. Statute applying to HHSC's strategic review would expire September 1, 2017.

In its strategic review, HHSC would:

- identify measures that were not required by state or federal law that could be eliminated from DSHS contracts;
- review and identify changes to the metrics and methodology for withholding funds from local mental health authorities for use as performance-based incentive payments;
- consider strategies associated with the performance measures and accountability processes for managed care organizations;
- along with the third party, develop outcome measures for behavioral health contracts based on best practices in performance measurement and contracting;
- use a subset of the developed outcome measures to develop and implement incentive payments and financial sanctions for behavioral health contracts that are aligned with HHSC models for purchasing health care services;
- along with DSHS, identify and determine ways to eliminate obstacles to the timely processing of contracts for behavioral health services;
- along with DSHS, determine ways to streamline behavioral health contracts, including reporting requirements, to minimize the administrative burden on behavioral health providers, HHSC, and DSHS; and
- develop and make public an online dashboard that would allow the public to compare behavioral health services providers.

New or renewed behavioral health services contracts after September 1, 2015 would not be allowed to include performance measures that the HHSC's review had identified for elimination. HHSC and DSHS also would implement changes to the metrics and methodology for withholding local mental health authority funds for performance-based incentive payments by September 1, 2015. After September 1, 2016, new or renewed behavioral health services contracts would have to include the outcome measures, incentive payments, financial sanctions, and streamlined reporting requirements developed under HHSC's review.

Regional allocation of state mental health hospital beds. As soon as

practicable after September 1, 2015, the bill would require HHSC, with input from local mental and behavioral health authorities and after considering any plan developed under Health and Safety Code, sec. 533.051, governing allocation of outpatient mental health services and beds in state hospitals, to divide the state into regions to allocate state hospital beds for patients who are:

- voluntarily admitted to a state hospital for chemical dependency or mental health services;
- admitted to a state hospital for emergency detention for chemical dependency or mental health services;
- court-ordered to receive inpatient chemical dependency or mental health treatment at a state hospital;
- committed to a state hospital to attain competency to stand trial; or
- committed to a state hospital to receive inpatient mental health services following an acquittal by reason of insanity.

As soon as practicable after September 1, 2015, local mental health and behavioral health authorities would develop and submit for HHSC approval a methodology for regionally allocating state hospital beds. HHSC could approve the allocation methodology and begin allocating beds only if the authorities demonstrate that the methodology fairly allocates state hospital beds across the state.

The bill would require HHSC to assess and collect a fee from each local mental or behavioral health authority for each day patients from a certain region use more beds than the number allocated to that region by HHSC. HHSC would distribute any fees collected for overutilization of beds to local mental or behavioral health authorities that used fewer beds than their regional allocation. HHSC would distribute the fees in proportion to the underuse of state hospital beds in the regions where the authorities are located.

Before HHSC approves the methodology for regionally allocating state hospital beds, DSHS would continue to allocate beds according to its current policy.

Requirements for community-based behavioral health facilities. The bill would allow the executive commissioner of HHSC to adopt rules establishing new types of residential, community-based crisis and treatment facilities for people with mental health disorders, substance abuse disorders, or co-occurring mental health and substance abuse disorders. The facilities would be based on best practices and would receive priority for state funding along with facilities that deliver mental health or substance abuse services in an innovative manner.

DSHS would have to conduct a comprehensive review of department rules and department contract requirements governing community-based crisis and treatment facilities for those with mental health and substance abuse disorders. The review would include DSHS regulatory staff, behavioral health program staff, and stakeholders working together to identify best practices for and unnecessary barriers to effectively delivering mental health and substance abuse services in these facilities. By September 1, 2016, the HHSC executive commissioner would have to adopt rules relating to community-based crisis and treatment facilities after considering recommendations made by a behavioral health services advisory body based on proposals from DSHS regulatory staff, behavioral health program staff, and stakeholders. Provisions relating to the new requirements for community-based behavioral health facilities, DSHS review and related rulemaking by the HHSC executive commissioner would expire September 1, 2017.

Contracting for functions relating to substance abuse. Starting September 1, 2015, DSHS could create or renew contracts only with local mental or behavioral health authorities to administer outreach, screening, assessment, and referral functions related to providing substance abuse services.

Hotlines. DSHS would have to ensure that each local mental and behavioral health authority operated a single toll-free phone hotline that would allow a person to call a single number and find information about mental health services, substance abuse services, or both from any of the authorities.

Emergency medical services. The bill also would add certain

requirements for the emergency medical services (EMS) industry.

Jurisprudence exam. The bill would allow DSHS to develop and administer twice per year a jurisprudence exam for those applying for an emergency medical services provider license or certification. DSHS rules would have to specify who would take the exam on the behalf of an entity applying for an emergency medical services provider license.

Physical business location. The bill would require an applicant for an emergency medical services provider license to operate out of a permanent physical location as their primary place of business, to provide proof of that location, and to prove that they own or have a long-term lease for all equipment necessary for safe operation of emergency medical services. The physical location could be owned or leased by the EMS provider, but the provider would have to remain in the same physical location for the period of licensure, unless DSHS approved a change in location. The EMS provider would have to maintain all patient care records in the physical location that is their primary place of business unless the department approved a different location. Only one EMS provider could operate out of a single physical location.

EMS complaint information. DSHS would have to track and keep records of received complaints, investigations, and disciplinary actions regarding EMS providers and personnel.

DSHS would develop a formal process to refer complaints outside its jurisdiction to the appropriate agency for disposition. DSHS also would track the types of complaints received outside its jurisdiction, separately track outside complaints related to potential billing fraud, and refer information about all outside complaints available to the appropriate state agency.

The bill would require DSHS to report annually statistical information about each complaint it receives and each investigation or initiated disciplinary action. The report would include the reason and basis for each complaint; the origin of each investigation; the average time to resolve each complaint; the number of investigations that involved disciplinary action or no disciplinary action; the reason why no disciplinary action was

taken, if applicable; the number of complaints referred to another agency for disposition; and the number, type, and age of each open investigation at the end of each fiscal year. DSHS would make the report available to the public through its website and on request.

Inspections. The bill would authorize DSHS to use an inspection performed by an entity to which it had delegated inspection authority as a basis for a disciplinary action, regardless of whether the inspection was performed before, on, or after September 1, 2015.

The bill would apply the provisions regarding EMS licensing only to a person who applied for a license or renewed a license on or after September 1, 2015.

Public health system. CSHB 2510 would require the department to establish goals for the state's public health system and develop an action plan to meet the goals.

Inventory of public health entities. The bill would require DSHS to develop and periodically update a comprehensive inventory of the roles, responsibilities, and capacity relating to public health services of the department's central office, public health regions, and each local health department, district, and authority in the state. The inventory would have to include the specific services and programs each entity currently provides and the level of services they provide.

The bill also would require DSHS, with input from the Public Health Funding and Policy Committee and local health departments, to create and update a clear matrix of duties specific to each region, indicating which entity performs which duty. DSHS would clearly delineate the division of duties between its central office and the public health regions. Each entity included in the matrix would provide DSHS with information regarding any significant change in the public health services it provides.
DSHS would update the inventory and matrix by September 1 of each even-numbered year and would biennially present the inventory and matrix at meetings of the Public Health Funding and Policy Committee as well as the State Health Services Council.

Goals and statewide priorities for public health services delivery. The bill would require DSHS, in consultation with the Public Health Funding and Policy Committee, to:

- establish clear goals and statewide priorities for developing and improving the public health services delivery system;
- develop an overarching vision for the department's central office, each public health region, and local health departments, districts, and authorities;
- develop goals and strategies for each region in the state with milestones, dates, performance measures, and identified necessary resources; and
- create a public health action plan with regional strategies and milestones to achieve these goals.

The bill would require DSHS to complete an updated public health action plan by November 30 of each even-numbered year and to present the plan, including progress on previous goals, to the Public Health Funding and Policy Committee, the State Health Services Council, and the appropriate standing committees of the Legislature.

Vital statistics. The bill would implement certain measures requiring identity verification before granting a person access to vital statistics and records.

Identity verification and self-assessment report. The bill would require a person who had applied by mail for a vital statistics record to provide notarized proof of their identity in accordance with rules adopted by the HHSC executive commissioner before the state registrar or a local registrar could issue them a certified copy of the record. The bill would allow the executive commissioner's rules to require the issuer of the certified copy to verify the notarization using records from the secretary of state. The bill also would require each local registrar to submit annually a self-assessment report to the state registrar and would require DSHS to prescribe the information that must be included in the report to allow a thorough desk audit of a local registrar.

Fingerprinting. The bill would prohibit a person from accessing vital

records maintained by DSHS and from accessing the department's vital records electronic registration system without a satisfactory fingerprint-based criminal background check using state and federal databases. DSHS could adopt a policy waiving the requirement of a fingerprint-based background check if a person had previously submitted a fingerprint-based background check as a condition of licensure by a state agency.

Texas Health Care Information Collection Program. CSHB 2510 would repeal the separate Sunset date for the Texas Health Care Information Collection Program and would require the HHSC executive commissioner to adopt rules to establish a process by which DSHS could grant a waiver of up to one year to exempt a facility from requirements to submit data. The bill would specify that a facility could be exempt if it conducted fewer than 600 procedures a year and did not have information systems capable of automated reporting of certain claims. A provider that submitted data under the Texas Health Care Information Collection Program would not be civilly or criminally liable for the use of the data under the program or for subsequent release of the data by DSHS or another person.

Advisory committees, panels, and boards. The bill would abolish the Worksite Wellness Advisory Board, Sickle Cell Advisory Committee, Arthritis Advisory Committee, Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events, Youth Camp Training Advisory Committee, and Texas Medical Child Abuse Resources and Education System (MEDCARES) Advisory Committee. The bill would make conforming changes to remove associated references to these entities and would specify that HHSC would take custody of the entities' property, records, or other assets.

Regulatory programs transferred to TDLR. Under the bill, certain occupational licensing programs would be transferred to the Texas Department of Licensing and Regulation (TDLR).

Transfers during the biennium ending August 31, 2017. The bill would transfer regulation of midwives; speech-language pathologists and audiologists; hearing instrument fitters and dispensers; athletic trainers; orthotists and prosthetists; and dieticians from DSHS to TDLR during the

biennium ending August 31, 2017. The bill would remove the separate Sunset dates for the regulatory programs and would maintain certain DSHS requirements in the Texas Midwifery Act. The bill would reconstitute the existing boards and committees associated with these professions as advisory boards at TDLR and would make them responsible for providing advice and recommendations to TDLR on technical matters relevant to the administration of the laws associated with the regulatory programs. The bill would specify the advisory boards' appointments, meeting requirements, and duties.

The bill also would make conforming changes to existing TDLR requirements and procedures and would transfer administration and enforcement of the regulatory programs to TDLR's executive director and rulemaking authority to the Texas Commission of Licensing and Regulation. The bill would repeal provisions of law associated with the regulatory programs that would duplicate or conflict with other provisions of law that apply to TDLR.

Transfers during the biennium ending August 31, 2019. Effective September 1, 2017, the bill would transfer regulation of offender education providers, laser hair removal, massage therapists, code enforcement officers, sanitarians, and mold assessors and remediators from DSHS to TDLR during the biennium ending August 31, 2019. The TDLR executive director would administer and enforce the regulatory programs, and TDLR would take over rulemaking authority associated with the programs. The bill would authorize TDLR to establish an advisory committee to provide advice and recommendations to TDLR on technical matters relevant to administration of code enforcement officer and sanitation programs.

The bill would make conforming changes related to administration and enforcement for each of the regulatory programs to conform with existing TDLR requirements and procedures. The bill also would repeal provisions of law associated with the regulatory programs that would duplicate or conflict with other provisions of law that apply to TDLR.

Transition provisions. The bill would require DSHS and TDLR to adopt a transition plan as soon as practicable after the effective date of the transfer

to provide for the orderly transfer of power, duties, functions, programs, and activities. The transition plan would have to be completed by the respective effective dates of each program's transition. The bill would require TDLR to create a health professions division by August 31, 2017, to oversee programs transferred from DSHS and to ensure that TDLR develops necessary health-related expertise.

Regulatory programs transferred to the Texas Medical Board. Certain occupational licensing programs also would be transferred to the Texas Medical Board.

Medical radiologic technologists and respiratory care practitioners. CSHB 2510 would transfer the regulation of medical radiologic technologists, respiratory care practitioners, medical physicists, and perfusionists from DSHS to the Texas Medical Board and would establish associated advisory boards and advisory committees. The bill would require these programs to undergo Sunset review at the same time as TMB. The bill would require fingerprint-based background checks for new applications and renewals for all four professions transferring to TMB and would require the advisory boards and TMB to adopt rules and guidelines for consequences of criminal convictions. The background checks would apply to applications or renewals starting January 1, 2016. The bill would repeal provisions of law associated with the regulatory programs that duplicate or conflict with other provisions of law that currently apply to TMB and would make conforming changes.

Medical physicists and perfusionists. The bill would transfer the regulation of medical physicists and perfusionists from DSHS to TMB, abolish their associated boards, and would create informal advisory committees for the professions. The bill would set requirements for appointments, terms, and meeting requirements of the advisory committees and their members. The advisory committees would have no independent rulemaking authority, and the bill would require TMB to adopt rules and implement policies necessary to regulate the medical physicist and perfusionist regulatory programs.

Transition provisions. CSHB 2510 would require DSHS and TMB to adopt a transition plan to provide for the orderly transfer of powers,

duties, functions, programs, and activities for programs transferred by DSHS to TMB as soon as practicable after September 1, 2015. The bill would specify that rules and fees; licenses, permits, or certificates; and complaints, investigations, contested cases, or other proceedings continue or transfer from DSHS to TMB until the authorized entities change them. The bill would abolish the existing Texas Board of Licensure for Professional Medical Physicists and the Texas State Perfusionist Advisory Committee on September 1, 2015, and would require the governor and the president of TMB, as appropriate, to appoint members to the Texas Board of Medical Radiologic Technology, the Medical Physicist Licensure Advisory Committee, the Perfusionist, Licensure Advisory Committee, and the Texas Board of Respiratory care as soon as practicable after September 1, 2015.

Deregulation of activities and occupations. The bill would discontinue various regulatory programs.

Repealed sections related to state licensing, regulation, and permitting. The bill would repeal provisions and make conforming changes to discontinue state involvement in the licensing, registration, and permitting of:

- indoor air quality in state buildings;
- rendering;
- tanning bed facilities;
- food handler education and training programs;
- bottled and vended water certifications;
- personal emergency response systems;
- opticians;
- contact lens dispensers;
- dyslexia therapists and practitioners; and
- bedding.

Food handler education and training programs. CSHB 2510 would remove DSHS accreditation of food handler education and training programs and replace it with accreditation by the American National Standards Institute. The bill would define a food manager and would

require a local health jurisdiction that requires training for a food service worker to accept a food manager training course accredited either by DSHS or the American National Standards Institute.

Expiration of licenses, permits, certification of registration, or authorization. The bill would specify that a license, permit, certification of registration, or other authorization repealed by the bill would not affect the validity of a disciplinary action taken, offense committed, or a fee paid before September 1, 2015 and that was pending before a court or other governmental entity on that date. The bill would specify that an offense or violation of law repealed by the bill is governed by the law in effect when the violation was committed and would continue the former law for that purpose. The repeal of law in the bill would not entitle a person to a refund of an application, licensing, or other fee paid before September 1, 2015.

Other repealed sections. The bill would remove from statute:

- the Drug Demand Reduction Advisory Committee;
- the Local Authority Network Advisory Committee;
- a provision added by SB 219 that requires the Medical Physicist Board to set fees for the issuance or renewal of a license in amounts designed to allow DSHS and the board to recover administrative costs; and
- a provision added by SB 219 that requires the executive commissioner to set fees for the issuance or renewal of a license in amounts designed to allow DSHS to recover administrative costs regarding the Texas State Perfusionist Advisory Committee.

Effective date. The bill would take effect September 1, 2015, except for the transfer of regulatory programs from DSHS to TDLR in the biennium ending August 31, 2019, which would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 2510 would eliminate unnecessary regulation and would transfer certain regulatory functions away from DSHS so the agency can focus on its core function: improving the health and well-being of Texans.

Mental health training curriculum. By requiring the development of a

mental health training curriculum for attorneys and judges, the bill would improve communication and collaboration with the judiciary and would reduce stress on the state's mental health hospital system by increasing awareness of community treatment alternatives to committing patients to inpatient treatment in state mental health hospitals.

Behavioral health services. The bill also would provide a more integrated, streamlined, and performance-based approach to delivering mental health and substance abuse services that supports innovation, collaboration, and measurable results by consolidating mental health and substance abuse hotlines and requiring HHSC to conduct a strategic review to evaluate and improve the performance measures and payment mechanisms included in DSHS' contracts with providers of behavioral health services.

EMS provider requirements. Provisions requiring an EMS provider to have a physical location for its business, and to show proof of ownership or a long-term lease for all necessary equipment, would ensure EMS providers and personnel comply with legitimate health care business practices and would ensure EMS complaints are promptly, consistently, and reliably addressed.

Provisions requiring DSHS to develop a comprehensive inventory of the public health responsibilities of the state and each local health department, district, and authority would help identify areas where significant gaps or overlap in duties exists. They also would increase coordination of public health entities across the state while reducing inefficiency. Improved coordination of public health efforts resulting from the bill would be particularly important if the state experienced another outbreak of infectious disease, such as Ebola.

Vital statistics. The bill would strengthen the security of vital statistics by requiring identity verification through notarization for all mail-in vital records and requiring fingerprint-based criminal history background checks.

Texas Health Care Information Collection Program. The state has a continuing need for the Texas Health Care Information Collection

Program, and the bill would continue this entity. The Sunset review determined that DSHS appropriately collects and handles the data and that the information serves a useful purpose to help understand and improve the status of the state's healthcare system.

Regional allocation of funding for state hospital beds. The proposed methodology for allocating regional funding for state hospital beds would take into consideration those local mental health authorities (LMHAs) that are over-utilizing hospital beds to the detriment of other LMHAs. It also would discourage overuse of state hospital beds. These beds are expensive and often are not the best way to treat people in the behavioral health system. The bill's process for developing a methodology for allocating funds would encourage robust, community-based treatment instead of state hospital treatment. The state could help more people while saving money.

Food handler education and training. Many states use ANSI accreditation for their food handler education and training programs. Furthermore, the cost of the accreditation would not be overly onerous for these training programs. The bill would not make it mandatory for a food handler training provider to be certified and would not change the ability of local jurisdictions to choose to waive the requirement for a training provider to be certified, if necessary.

Discontinuing and transferring regulatory programs and licensing. Discontinuing regulatory programs housed at DSHS and moving certain programs to the Texas Department of Licensing and Regulation or to the Texas Medical Board would improve the agency's focus on protecting public health while maintaining necessary licensing and regulation for certain professions. Registration for dyslexia practitioners was added to statute relatively recently and is not necessary for these individuals.

The Texas Board of Orthotics and Prosthetics has had very few complaints about fraud, which indicates that fraud complaints regarding orthotics and prosthetics will be few and far between in the future. The newly created advisory boards at TDLR still could regulate orthotists and prosthetists as well as speech-language pathologists and audiologists.

OPPONENTS SAY:

Regional allocation of funding for state hospital beds. The bill's process for developing the methodology for regionally allocating beds at state mental health hospitals and the policy of withholding payments to local mental health authorities for overutilization of hospital beds according to this methodology would overly penalize these entities. The state has too few mental health hospital beds for the state's population, and the methodology in the bill for allocating beds between regions would not necessarily address this.

Food handler education and training. Accreditation of food handler education and training programs should remain at DSHS rather than requiring accreditation by the American National Standards Institute (ANSI). ANSI certification is cost prohibitive and would overly burden food handler training programs. The increased cost for accreditation could reduce the number of food handler training providers in Texas and make it harder for service industry staff to have a choice of training providers.

Discontinuing and transferring regulatory programs and licensing. The bill should retain licensure for dyslexia practitioners. Licensed dyslexia professionals often work in a private session one-one-one with a child, and the state has an interest in ensuring that dyslexia practitioners can be held to certain professional standards. Removing licensure would remove accountability for those practitioners.

The bill also should not convert independent boards to advisory boards, especially for the State Board of Examiners for Speech-Language Pathology and Audiology and the Texas Board of Orthotics and Prosthetics. Speech-language pathologists work with individuals one-on-one, and an independent board is needed to oversee licensing for these professionals. Orthotics and prosthetics need to be precise, so their regulatory authority should stay with a health agency such as DSHS rather than be transferred TDLR. The profession requires consumer feedback, and an advisory board could not respond to that feedback as well as the current board can. Fraud also is a concern because prosthetics are expensive. The current board is better able to control fraud than an advisory board.

NOTES:

The bill would have a negative net fiscal impact of $8.3 million through

the biennium ending August 31, 2017, according to the Legislative Budget Board's fiscal note.

CSHB 2510 differs from the bill as introduced in that the substitute would:

- repeal Health and Safety Code, subch. F, ch. 461A, amended by SB 219 as enacted by the 84th Legislature;
- make certain changes to conform to SB 219 enacted by the 84th Legislature; and
- add a provision continuing the Department of State Health Services until September 1, 2027, unless HB 2304, SB 200, or similar legislation of the 84th Legislature transferring the functions of DSHS to the Health and Human Services Commission is enacted or becomes law.

The companion bill, SB 202 by Nelson, was left pending in the Senate Health and Human Services Committee on March 23.

SUBJECT: Allowing patients with terminal illnesses to access investigational drugs

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Crownover, Coleman, S. Davis, R. Miller, Sheffield, Zedler, Zerwas

0 nays

4 absent — Naishtat, Blanco, Collier, Guerra

WITNESSES: For — Kurt Altman, Goldwater Institute; Michelle Wittenburg, KK-125 Ovarian Cancer Research Foundation (*Registered, but did not testify*: Mary Amador, Catholic Bishops Advocacy Day; Steve Bruno, Ron Hinkle, Kym Olson, Bonnie Bruce, Dale Laine, and Allen Blakemore, KK-125 Ovarian Cancer Research Foundation; Rene Lara, Texas AFL-CIO; Maxcine Tomlinson, Texas New Mexico Hospice Organization; Thomas Ratliff, Texas Nurse Practitioners Association; and eight individuals)

Against — None

On — David Bales and Will Decker, Texans for Stem Cell Research; Mari Robinson, Texas Medical Board; Charles Levenback, University of Texas MD Anderson Cancer Center (*Registered, but did not testify*: Karen Tannert, Department of State Health Services; Pat Brewer, Texas Department of Insurance)

BACKGROUND: Federal law defines an "investigational drug" under 21 C.F.R. sec. 312.3 to mean a new drug or biological drug that is used in a clinical investigation. The term also includes a biological product that is used in vitro for diagnostic purposes.

A "biological product" is defined in federal law under 42 U.S.C. sec. 262 to include a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or protein applicable to the prevention, treatment, or cure of a person's disease or condition.

DIGEST:

Legislative intent. CSHB 21 would be known as the "Right To Try Act." The bill would specify that the Legislature intends to allow for patients with a terminal illness to use potentially life-saving investigational drugs, biological products, and devices.

Eligibility. Under the bill, a patient with an terminal illness would be eligible to access and use an investigational drug, biological product, or device if the patient's physician had considered all other treatment options currently approved by the U.S. Food and Drug Administration (FDA) and determined that those treatment options were unavailable or unlikely to prolong the patient's life and the physician had recommended or prescribed in writing that the patient use a specific class of investigational drug, biological product, or device. A Texas prisoner covered by the state's correctional managed health care plan would be eligible under the bill if the Offender Health Services Plan and federal law governing offender participation in biomedical research permit their eligibility. The bill would not affect coverage for enrollees in clinical trials under Insurance Code, ch. 1379.

Definitions. CSHB 21 would define an "investigational drug, biological product, or device" to mean a drug, biological product or device that has successfully completed phase one of a clinical trial but has not yet been approved by the FDA for general use and remains in the clinical trial. "Terminal illness" would mean an advanced stage of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

Informed consent. To receive an investigational drug, biological product, or device, an eligible patient or their parent or legal guardian would have to sign an informed consent form and provide it to the manufacturer of the drug, product, or device. The bill would allow the executive commissioner of the Health and Human Services Commission, in collaboration with the Texas Medical Board, to adopt by rule an informed consent form for this purpose.

Manufacturer requirements. The bill would not require a manufacturer to provide an investigational drug, biological product, or device to an

eligible patient. Under the bill, a manufacturer could choose whether to charge a patient for the cost of the manufacture of the investigational drug, biological product, or device. A health insurance plan could, but would not be required to, provide coverage for the cost of an investigational drug, biological product, or device.

Lawsuits. The bill would not create a private or state cause of action for a lawsuit against a manufacturer of an investigational drug, biological product, or device or against any other person or entity involved in the care of an eligible patient for any harm done to the patient as a result of the treatment.

Patient access and physician licensing. Under the bill, a state of Texas official, employee, or agent could not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device. The Texas Medical Board could not revoke, fail to renew, suspend, or take any action against a physician's license based solely on a physician's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device, as long as the care and recommendations the physician provided to the patient met the standard of care and requirements of the bill.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 21 would make it easier for patients who are terminally ill to access investigational drugs. The current process to test, approve, and bring a new drug to market under federal regulations can take a decade or more, which is longer than patients with a terminal illness can wait. Under the bill, manufacturers would not be required to provide investigational drugs. The bill would encourage manufacturers to make the drugs available by specifying that the bill did not create a cause of action for a lawsuit after the patient signed an informed consent form and consulted with the patient's physician.

Terminal patients would have the opportunity to be treated with drugs that had passed phase one of the FDA trials and could be effective in treating

their condition. Passing phase one indicates that a drug has been proven not to be harmful to humans. A physician would still have to evaluate the patient, and would not recommend a drug for a patient that would interact badly with the patient's illness. The bill would not open the door to reckless behavior on the behalf of a patient or physician, but rather would allow the patient to balance the risks and benefits of potential treatments and make the highly personal decision to try to save the person's life using every means available.

The bill would not discourage a patient's participation in a clinical trial because manufacturers typically provide the treatment for free in clinical trials. Additionally, many patients are not eligible for clinical trials or cannot travel to participate in a clinical trial, so this bill would expand those patients' ability to access investigational drugs.

The FDA structure exists for a purpose, but an informed patient in Texas needs to have the same access to drugs as patients in other states that have passed similar legislation.

OPPONENTS SAY:

The bill could cause patients with terminal illnesses to be exposed to unnecessary harm because investigational drugs that have passed phase one trials have not undergone thorough testing for a patient's specific condition and could cause negative side effects for a patient. The bill also would not necessarily increase patient access to drugs because the bill would not require manufacturers or health insurance plans to provide the treatment or pay for the treatment's cost, as manufacturers usually do for patients enrolled in a clinical trial.

By allowing patients to access investigational drugs outside of a clinical trial, the bill also could discourage patients from enrolling in clinical trials and thus could make it harder for drugs to be approved by the FDA.

It is the responsibility of the federal Food and Drug Administration to control patient access to drugs, not the states. It is unclear whether the bill would actually increase access to these investigational drugs beyond what the FDA allows.

NOTES:

The committee substitute differs from the introduced bill by:

- removing a provision stating that the Legislature finds that a patient should make a decision to use investigational drugs in consultation with the patient's family;
- removing a requirement that the written informed consent signed by a patient must be attested to by the patient's physician and a witness;
- replacing a requirement that a patient who is a minor or lacks the mental capacity to provide informed consent have a guardian or conservator provide informed consent on the patient's behalf with a requirement that a legal guardian provide informed consent on the patient's behalf;
- making it permissive instead of a requirement that the Health and Human Services executive commissioner adopt by rule an informed consent form and adding a requirement that the executive commissioner collaborate with the Texas Medical Board in adopting the form;
- adding a provision making a person covered by a correctional managed health care plan an eligible patient under the bill;
- adding the language "provided that the care provided or recommendations made to the patient meet the standard of care and the requirements of this chapter" to sec. 489.151 prohibiting action against a physician's license based solely on the physician's recommendations to an eligible patient regarding an investigational drug, biological product, or device; and
- removing a deadline for when the Health and Human Services executive commissioner had to adopt an informed consent form.

A similar bill, SB 694 by Bettencourt, was approved by the Senate on April 9.

SUBJECT: Establishing the State Securities Board as an SDSI

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Stephenson

0 nays

1 absent — Pickett

WITNESSES: For — (*Registered, but did not testify*: Jay Propes, FMR Corp, Fidelity Investments)

Against — None

On — John Morgan, State Securities Board

BACKGROUND: The State Securities Board regulates the financial securities market in Texas. It registers securities, oversees firms and individuals who sell securities or provide investment advice, and enforces the provisions of the Securities Act under Vernon's Texas Civil Statutes, art. 581. The State Securities Board is subject to the Texas Sunset Act and is scheduled to undergo review during 2018-19.

Self-directed and semi-independent agencies (SDSIs) are state agencies that are supported by various fines, fees, and other money and are exempt from the appropriations process. These agencies manage and approve their own budgets and can set their own fees.

The SDSI Act, Government Code, ch. 472, established and governs three SDSIs: the Board of Public Accountancy, the Board of Professional Engineers, and the Board of Architectural Examiners. Finance Code, ch. 16 established and governs four SDSIs: the Department of Banking, the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Credit Union Department. The Texas Real Estate Commission is authorized to be an SDSI under Occupations Code, ch. 1105.

A 2014 report from the Sunset Advisory Commission on its review of SDSIs recommended that the agencies be authorized under the same uniform code. It also suggested that review processes for SDSIs be established before new agencies become SDSIs.

DIGEST:

CSHB 2493 would amend the Securities Act to establish the State Securities Board as a self-directed and semi-independent (SDSI) agency. Under this status, the board would be responsible for covering its own operational costs through fees and other revenue and would not be subject to the legislative appropriations process.

The State Securities Board's budget would be adopted and approved by its board members. The agency would be authorized to set its fees, penalties, charges, and revenues. The bill would remove from statute the amounts of fees currently assessed under subsection A, sec. 35 of the Securities Act and would direct the board to establish those fees in amounts that would generate revenue sufficient to cover the costs of administering and enforcing the act.

Funds collected by the State Securities Board would be deposited in interest-bearing accounts in the Texas Treasury Safekeeping Trust Company. Any of these funds beyond the operational costs would be deposited in general revenue. The board would not be able to hold funds in an account that is not controlled by the state comptroller.

The State Securities Board would continue to function as a state agency in many respects. It would be required to follow requirements with regard to state purchasing, interagency vouchers, prompt payment, and travel reimbursement. Its employees would continue to be members of the Employees Retirement System. For the purposes of open meetings and public information requirements, the board would be considered a government body. It also would be considered a state agency for the purposes of administrative procedure and rules related to licenses and permits.

CSHB 2493 would establish certain requirements regarding disclosure and reporting of financial and statistical information for the State Securities

Board. The commissioner would have to submit a report to the Legislature and the governor before each regular legislative session describing the agency's activities in the previous biennium. The commissioner also would be required to submit an annual report to the governor, the Legislative Budget Board, the House Appropriations Committee, and the Senate Finance Committee. The report would be required to contain:

- salaries of board employees and their travel and per diem expenses and trend performance data for the previous five years;
- the travel and per diem expenses of each member of the board and trend performance data for the previous five years;
- a detailed report of all revenue received and all expenses incurred from the previous year; and
- the agency's operating plan, including expected revenue and expenses for the next two years and trend performance data in several operational categories for the preceding five years.

The commissioner would be required to disclose any gifts received by the agency and the purpose of each gift. The commissioner would be forbidden from accepting gifts from parties to an enforcement action and gifts from actors encouraging a specific investigation or enforcement action.

CSHB 2493 would allow the commissioner, on behalf of the board, to buy and sell property, as well as construct facilities for its operations. The securities commissioner could borrow money for up to five years with a three-fifth's majority of the board's membership. The commissioner could enter into contracts, so long as any resulting debt, liability, or obligation did not create:

- a debt or liability to the state or for any entity other than the agency; or
- a personal liability for board members or employees.

The Sunset Advisory Commission would examine the board's performance as an SDSI in advance of the board's existing Sunset date of September 1, 2019. The board would pay the commission's costs in performing the review.

If the board ceased at any time to function as an SDSI, it would continue to be liable for any obligations, but any property or asset it had acquired during that period would transfer to the state.

The State Securities Board would be required to repay appropriations for fiscal 2016-17 to the general revenue fund as soon as the funds became available and before the end of each fiscal year.

CSHB 2493 would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2493 would allow the State Securities Board to operate more like a business by authorizing it to become a self-directed and semi-independent (SDSI) agency. The board needs SDSI status to cope with the changing regulatory climate. The appropriations process is too slow for it to adjust to changes in the industry and from the federal government.

In particular, the board needs the ability to set salaries in order to retain veteran staff. In addition to losing personnel to private industry, the federal Securities and Exchange Commission (SEC) frequently recruits among board staff. The board cannot compete with the salaries of the SEC while it is subject to the appropriations process. The time to grant SDSI status to the board is now because the SEC recently announced an increased hiring budget. The agency expects the SEC will hire from its ranks to fill these new positions.

Moreover, the State Securities Board has been unable to create a meaningful career ladder for its employees under the appropriations process. To advance their careers, employees look to the SEC and other agencies. Turnover at the board has been significant in recent years among staff in inspection, enforcement, and registration. The turnover of so many employees makes it difficult for the agency to effectively regulate the industry.

Granting SDSI status to the State Securities Board would save the Legislature time in the appropriations process and would allow the state to continue receiving some general revenue funds from the fees collected by the agency. Because of the increasing volume of licensees, the board expects that it would lower its license costs as an SDSI because it would

continue to take in more money than it needs to operate. Furthermore, any excess money generated would be deposited into the general revenue fund, benefiting the state budget.

The financial services market is unique and should not be regulated under the Government Code, which contains the SDSI Act governing the state's first three SDSIs. The State Securities Board also is fundamentally different from boards that grant occupational licenses and are authorized by the Government Code. Unlike these agencies, which are engaged in certifying professional competence, the State Securities Board oversees $22 billion in investments in Texas. A different section of code would be necessary to address the needs of this agency as an SDSI.

CSHB 2493 appropriately would apply extensive reporting and transparency requirements to the State Securities Board. For instance, the agency would be required to use the comptroller's uniform accounting practices. In addition, submitting annual reports to the governor, the Legislature, and the Legislative Budget Board (LBB), would ensure that the board conducted its business with considerable transparency. The provisions of the bill requiring disclosure of gifts and forbidding gifts related to enforcement actions also would ensure that the agency did not become too close to industry.

Even as an SDSI, the State Securities Board would be held accountable and would receive sufficient oversight. The State Securities Board must comply with federal law related to securities in addition to state law. As a result, it receives oversight at both the state and federal level, unlike some of the existing SDSIs.

The SDSI model has worked successfully for eight different agencies, including financial agencies such as the Department of Banking, the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Credit Union Department. This bill would allow the State Securities Board to benefit from this model and operate more autonomously.

OPPONENTS SAY:

CSHB 2493 would create another SDSI despite concerns about these entities. Before the State Securities Board becomes an SDSI, the

Legislature should create a uniform process in law for granting this status to agencies. One problem with SDSIs is that there is no consistent code for governing these agencies and no vetting process to review them before they become semi-independent. Uniform code governing SDSIs should be established before the Securities Board or any other agency receives this status.

CSHB 2493 would continue the trend of creating new code for a particular SDSI, rather than bringing all of these agencies under the same enabling code. The Securities Board should be authorized as an SDSI under the SDSI Act in Government Code, ch. 472.

The bill includes no review provisions that would require Sunset or LBB review of the agency before it becomes an SDSI. The Sunset review process has extended beyond the usual 12 years for other agencies that became SDSIs because the clock was reset when they attained this status. The result is that these agencies have operated under less oversight for too long. The board should undergo Sunset review before it becomes an SDSI.

Reporting and transparency have been lacking among SDSIs, particularly among the finance-related SDSIs such as the Banking Commission and the Consumer Finance Commission. Making a similar agency an SDSI could create similar problems related to reporting.

Instead of being industry watchdogs, SDSIs can become too close to the industries they regulate. Underwriting operations with industry fees could lead to situations in which industry gained excessive influence on an agency.

OTHER OPPONENTS SAY:

Oversight of SDSIs should be returned to the appropriations process. These agencies lack meaningful oversight and tend to become too close to the industries they regulate. Only legislative oversight can ensure that these agencies serve the best interests of Texans.

NOTES:

According to the LBB’s fiscal note, the bill would result in an estimated negative net impact to general revenue related funds of $38.4 million through fiscal 2016-17. This would reflect a probable annual loss of $27.1

million in fees and other funds currently going into general revenue, partially offset by probable annual savings of nearly $7 million in general revenue and probable annual gains to the general revenue fund of $870,000. The LBB analysis also estimates a reduction of 104 full-time employees from the state payroll once the agency became an SDSI.

Unlike CSHB 2493, the bill as filed would have directed that an amount equal to half of the general revenue appropriated to the agency for fiscal 2015 be appropriated for each year of fiscal 2016-17. The committee substitute also includes various technical and conforming changes that were not in the filed bill.

SUBJECT: Appointing county commissioners as regional mobility authority directors

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Pickett, Martinez, Y. Davis, Fletcher, Murr, Paddie, Simmons

0 nays

5 absent — Burkett, Harless, Israel, McClendon, Phillips

WITNESSES: For — (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; Jim Allison, County Judges and Commissioners Association of Texas; Susan Redford, Ector County)

Against — None

On — Terri Hall, Texas TURF, Texans for Toll-free Highways; (*Registered, but did not testify*: John Barton, James Bass, and Bill Hale, Texas Department of Transportation)

BACKGROUND: Regional mobility authorities (RMAs) are responsible for the funding and financing of mobility projects that serve multiple local jurisdictions. Transportation Code, ch. 370 gives RMAs bonding authority. The RMA, rather than its constituent counties, is responsible for these debt obligations.

Transportation Code, ch. 370, subch. F provides that members of an RMA's board of directors are appointed by the commissioners courts of the constituent counties. The governor appoints one director who serves as the presiding officer. Subchapter F outlines a number of requirements for membership in a board of directors, including Texas residency and residence within the area of the mobility authority. Particular categories of people are excluded from serving on boards, including persons with real estate interests related to potential projects, government employees, and elected officials.

DIGEST: HB 2702 would create an alternative governance model under which

regional mobility authority (RMA) boards could be composed exclusively of county commissioners and appointed by each of the commissioners courts. County commissioners are elected officials, and under the alternative governance model, the provision in current statute barring elected officials from serving as directors on RMA boards would not apply.

A resolution authorizing the alternative board composition would have to be approved by at least two-thirds of each of the participating courts of county commissioners. The board of directors would elect its presiding officer from among its membership.

The following sections of subchapter F would not apply to the alternative board:

- a provision allowing a turnpike authority or county-owned toll project to propose a structure and method of appointment to the board (sec. 370.2515);
- provisions outlining prohibited conduct for directors and employees (sec. 370.252);
- a requirement for the director to file a financial statement with the Texas Ethics Commission (sec. 370.2521);
- provisions outlining the applicability to directors of laws on conflict of interest (sec. 370.2522) and nepotism (sec. 370.2523);
- a requirement for directors to execute surety bonds (sec. 370.253); and
- provisions governing the compensation (sec. 370.255) and removal (sec. 370.254) of directors.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2702 would improve the accountability and simplify the governance of regional mobility authority (RMA) boards by allowing elected officials to serve on the boards instead of appointees. Members of the public dissatisfied with the performance or decisions of RMA boards might find county commissioners to be more responsive and accountable to the public than unelected appointees. The bill also would improve local

control of RMAs by having the board of directors, rather than the governor, choose its own presiding official.

The purpose of RMAs varies between regions. This bill would allow for greater flexibility in governance to suit the needs of a specific area. Regions would not be required to use the alternative governance model, so those satisfied with the current system would be able to keep using it.

HB 2702 would not affect the financing of any mobility projects or the implementation of any proposed projects. Reporting and ethics requirements still would apply to county commissioners serving as directors because county commissioners are elected officials.

OPPONENTS SAY:

HB 2702's creation of an alternative governance model for RMA boards would not be sufficient to ensure that those making transportation decisions were accountable to the public. In the past, elected officials have avoided accountability by having RMAs make decisions about toll roads and other mobility issues. Instead of allowing RMA boards to be composed of elected officials such as county commissioners, the bill should require it.

SUBJECT: Requiring DNA samples from those convicted of enticing a child

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt

0 nays

WITNESSES: For — David Fugitt, Austin Police Department; Amy Mills, Dallas Police Department; Holly Whillock, Houston Police Department; (*Registered, but did not testify*: Donald Baker, Austin Police Department; Justin Wood, Harris County District Attorney's Office)

Against — None

On — (*Registered, but did not testify*: Skylor Hearn, Texas Department of Public Safety)

BACKGROUND: Penal Code, sec. 25.04 makes it a crime to knowingly entice, persuade, or take children from the custody of their parents or guardians or from a person standing in the stead of children's parents or guardians. The offense must be done with the intent to interfere with the lawful custody of a child younger than 18. The crime of enticing a child is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) unless there was intent to commit a felony against the child, in which case it is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

The Department of Public Safety (DPS) maintains the state's computerized database under Government Code, ch. 411, subch. G. Its principal purpose is to help criminal justice agencies investigate and prosecute crimes. Law enforcement authorities are required to collect DNA from convicted felons, those charged with certain felonies, those required by the state to register as sex offenders, and repeat offenders who are arrested for specific crimes. In addition, those convicted of or placed on deferred adjudication for the misdemeanor crimes of public lewdness or indecent exposure are required to provide a sample for the purpose of

creating a DNA record.

DIGEST:

CSHB 941 would expand the state's DNA database to include samples from those convicted of enticing a child. Courts would have to require defendants convicted of enticing a child to provide a sample for the purpose of creating a DNA record.

Courts would no longer have to require those placed on deferred adjudication for public lewdness or indecent exposure to submit a sample for the database.

The bill would require DPS to destroy DNA samples collected solely to create a DNA record. The destruction would have to occur immediately after test results associated with the sample were entered into the state DNA and federal CODIS databases.

Those convicted of enticing a child would be required to pay a court cost of $50 for the required DNA testing. The fee would go to DPS to defray the cost of the DNA analysis, but counties could choose to retain 10 percent of the fee. The bill would revise the distribution of the current $50 fee paid by those convicted of or placed on deferred adjudication for public lewdness or indecent exposure. Instead of 35 percent of the fee going to the State Highway Fund and 65 percent going to the criminal justice planning account, the fee would go to the DPS and the counties.

The current provision that allows offenders to give only one DNA sample, even though they may be required to do so under multiple sections, would be extended to include those required to give a sample as a condition of probation.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 941 would help improve public safety by requiring those who are convicted of enticing a child to submit a DNA sample for the state's database. The bill would be a logical, narrow extension of current law, which already requires collection of DNA samples from those convicted of the misdemeanor crimes of public lewdness and indecent exposure.

Having DNA samples from those convicted of enticing a child would help law enforcement agencies investigate, solve, and prevent crime. DNA records can help accurately and quickly identify suspects so that the guilty can be convicted and the innocent exonerated. These critical data could help prevent future offenses.

It is important to include those convicted of enticing a child in the state's DNA database because such offenders may have a history of other crimes, especially against children, that comes to light only after the person's DNA is collected and linked with previous incidents. Offenders convicted of enticing a child may have had more serious crimes in mind, such as kidnapping or indecency with a child, but were stopped before they could carry out that offense, or they could have agreed to plead guilty to enticing a child to avoid a more serious charge.

The bill would apply narrowly to convictions for enticing a child, mirroring current law that applies to convictions for the misdemeanor offenses of public lewdness and indecent exposure. The bill would focus the state's efforts on dangerous offenders by eliminating the current requirement that those who receive deferred adjudication for public lewdness and indecent exposure provide samples.

Collecting DNA has become the standard method for compiling identity information about people convicted of crimes, and the state's database is well established. The samples are not used to obtain private information or to infringe on privacy.

The bill would increase public safety without adding a financial burden by requiring offenders to pay a $50 fee to defray the cost to the counties and to DPS of collecting and analyzing the samples.

OPPONENTS SAY:

Any expansion of Texas' DNA data collection efforts should be linked to those arrested or convicted of more serious crimes only. Such a targeted approach would keep the collection and analysis system from being overwhelmed, which would constitute the best use of state resources. As Texas expands its database to include more misdemeanor offenses, it runs the risk of upsetting the balance between public safety and privacy.

OTHER OPPONENTS SAY:

Requiring DPS to destroy DNA samples could conflict with requirements related to DPS lab accreditation. Destruction of samples also could make it difficult for DPS to perform additional testing, if needed, and to carry out other practices, such as match confirmations.

NOTES:

The Legislative Budget Board's fiscal note estimates that the bill could be implemented within DPS' current resources. Local governments could see a slight positive fiscal impact from their share of the $50 court cost.

The committee substitute made several changes to the original bill, including eliminating provisions that would have required DNA samples from anyone convicted of a class B misdemeanor or higher offenses. The committee substitute added the provision requiring a sample from those convicted of enticing a child.

The bill's author plans to offer a floor amendment that would make the requirement that DPS destroy DNA samples permissive instead of mandatory.

A similar bill, SB 725 by Perry, was reported favorably by the Senate Criminal Justice Committee on April 8 and recommended for the local and uncontested calendar.

SUBJECT: Permitting and regulation of aquifer storage and recovery injection wells

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Keffer, Ashby, D. Bonnen, Burns, Kacal, T. King, Larson, Lucio, Nevárez, Workman

0 nays

1 absent — Frank

WITNESSES: For — Bill Mullican, CDM Smith; Jim Conkwright, Prairielands Groundwater Conservation District; Brian Sledge, TWCA Groundwater Legislative Committee; Lone Star GCD; Prairielands GCD; Upper Trinity GCD; (*Registered, but did not testify*: Matt Phillips, Brazos River Authority; Kent Satterwhite, Canadian River Municipal Water Authority; Heather Cooke, City of Austin; Jeff Coyle, City of San Antonio; John Grant and David Holt, Colorado River Municipal Water District; Ben Sebree, Marathon Petroleum Corporation; Harvey Everheart, Mesa UWCD; C.E. Williams, Panhandle Groundwater Conservation District; Hope Wells, San Antonio Water System; Daniel Gonzalez and Steve Garza, Texas Association of Realtors; Stephen Minick, Texas Association of Business; Billy Howe, Texas Farm Bureau; Ronald Hufford, Texas Forestry Association; Shanna Igo, Texas Municipal League; Dean Robbins, Texas Water Conservation Association; Ed McCarthy)

Against — Greg Sengelmann, Gonzales County Underground Water Conservation District; Tim Andruss, Victoria County GCD, Texana County GCD, Refugio County GCD, Calhoun County GCD; Marc Young

On — Alan Day, Brazos Valley Groundwater Conservation District; Steve Box, Environmental Stewardship; Michele Gangnes, League of Independent Voters of Texas; Ken Kramer, Sierra Club-Lone Star Chapter; (*Registered, but did not testify*: Ron Ellis and Charles Maguire, Texas Commission on Environmental Quality)

BACKGROUND: Aquifer storage and recovery (ASR) is the injection of water into an

aquifer to be stored for later use.

Texas Water Code, ch. 11 addresses surface water ASR projects and requires developers to first conduct pilot projects before filing a permit application for an ASR project.

If an ASR project is located within the jurisdiction of a groundwater conservation district (GCD), developers must comply with GCD regulations.

DIGEST:

CSHB 655 would repeal the current regulations for surface water aquifer storage and recovery (ASR) projects, including the requirement for developers to conduct pilot projects before filing a permit application for an ASR project. Instead, the bill would provide the same regulatory framework for all ASR projects whether the injected water was surface water or groundwater.

Jurisdiction of Texas Commission on Environmental Quality. The bill would give the Texas Commission on Environmental Quality (TCEQ) exclusive jurisdiction over the regulation and permitting of ASR injection wells.

In issuing permits for ASR projects, TCEQ could act by rule, general permit, or individual permit and would consider whether the applicant had considered:

- Safe Drinking Water Act compliance;
- the extent to which the amount of water injected could be actually recovered and the effects of any commingling with native groundwater;
- the effect of the project on existing wells; and
- the potential for native groundwater quality degradation.

A surface water right amendment would not be needed to store appropriated surface water in an ASR project prior to beneficial use, as long as the water right holder complied with the terms of the water right.

ASR wells located in a groundwater conservation district. If located in

a groundwater conservation district (GCD), ASR injection and recovery wells would have to be registered with the GCD and would be subject to regular well registration fees.

TCEQ would be required to limit the amount of water that could be recovered by a project to the total amount that was injected and further limit that amount to account for loss of native groundwater due to displacement.

If the project produced more water than the amount authorized for withdrawal by TCEQ, the project operator would be required to report the excess volume to the GCD. A GCD's spacing, production, and permitting rules and fees would apply only to the withdrawals above the amount authorized.

GCDs could consider ASR-related hydrogeologic conditions when planning and monitoring for the achievement of the desired future condition of the aquifer.

Reporting and other requirements. All wells that make up a single ASR project would have to be located on a continuous tract or two or more adjacent tracts under common ownership or contract. The ASR project developer would be required to meter all wells and report total injected and recovered amounts monthly to TCEQ and the GCD, if applicable, as well as annual water quality testing of injected and recovered water.

Exempt districts. The Edwards Aquifer Authority, the Harris-Galveston Subsidence District, the Fort Bend Subsidence District, the Barton Springs-Edwards Aquifer Conservation District, and the Corpus Christi Aquifer Storage and Recovery Conservation District would not be affected by passage of this bill.

TCEQ rules. TCEQ would be required to adopt rules, including rules related to well construction, completion, metering, and reporting requirements for ASR projects, by May 1, 2016.

TCEQ could not adopt or enforce groundwater quality protection standards that were more stringent than federal standards.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 665 would encourage the development of aquifer storage and recovery (ASR) projects, which could provide a significant portion of the storage needed to meet future demand for water. ASR projects are resistant to many of the problems associated with storing water aboveground in surface water reservoirs, such as adverse environmental impacts, land requirements, high costs, and significant water losses due to evaporation. ASR facilities yield 100 percent of their stored water, which could help Texas communities endure dry times. Many ASR systems pipe drinking water into an aquifer for storage during wet periods. Then, when summer brings peak demands, the water is pumped back out of the aquifer for use.

While there are more than 80 ASR projects operating in the United States, only three of them are in Texas. This limited number is largely because current regulations and statutes, both statewide and local, do not readily facilitate the most beneficial use of either groundwater or surface water for ASR projects. The bill would remove regulatory roadblocks to ASR projects, specifically the current dual regulatory scheme that gives TCEQ jurisdiction over the injection of water into the aquifer while GCDs have jurisdiction over the recovery of that stored water. Under this proposal, the permitting process would go through TCEQ, with monthly and annual reports being submitted to both TCEQ and the local groundwater conservation district (GCD). This would eliminate the challenge of dealing with the diverse regulatory landscape of groundwater districts.

District pumping limits would be applied only when a project had pumped more water from the aquifer than was injected. This would ensure that operators could access the water they injected without regulatory interference, while allowing GCDs to manage and protect native groundwater.

OPPONENTS SAY:

While further consideration and development of ASR projects is warranted, there are some provisions of the bill that could be problematic.

GCDs should play a vital role in the evaluation and oversight of ASR

projects, and CSHB 655 would go too far in limiting that role. The transfer of the ASR regulatory authority from the districts to TCEQ would eliminate a district's opportunity to evaluate and address the impacts of proposed ASR projects. Districts need to have a regulatory and permitting role, particularly for the recovery process. Without this, groundwater districts no longer would have the ability to manage the aquifer. The bill would allow GCD oversight only if a project pumped more water from the aquifer than was injected. A more appropriate approach would be to allow groundwater districts to adopt ASR rules for approval by TCEQ.

Further, the bill would prescribe an overly simplified approach to determining the amount of water that could be produced from an ASR project based solely on the volume of water injected into an aquifer. This approach could subject ASR projects to controversy that could be avoided with a more technical and scientifically established approach based on monitoring water quality characteristics. Monitoring would help ensure that water produced by ASR recovery activities was actually injected water.

Water quality in bodies of water can vary greatly. Water quality testing of both the injected and recovered water should be done more than once a year as the bill would require, especially if injecting treated wastewater.

The bill should provide an option for TCEQ to deny a permit based on a determination that water loss as a result of the project was so high that the injection was wasteful or not consistent with public welfare. Instead, TCEQ merely would restrict the amount of water that could be recovered to account for the loss.

CSHB 655 would prohibit TCEQ from setting groundwater quality protection standards more stringent than applicable federal standard even when circumstances might require higher standards to protect an aquifer. There should be some authority granted to TCEQ to go beyond federal requirements in appropriate circumstances.

NOTES:

A Senate companion bill, SB 1903 by Perry, was placed on the April 21 Senate intent calendar. Another companion bill, SB 1724 by Creighton, was referred to the Senate Committee on Agriculture, Water, and Rural

Affairs on March 23.

Comparison of original to substitute. CSHB 655 differs from the bill as filed in that the committee substitute would:

- define native groundwater;
- allow someone who contracted with a water right holder for use of the water to undertake an ASR project;
- expand the consideration of a project's potential for groundwater quality degradation; and
- exempt the Corpus Christi Aquifer Storage and Recovery Conservation District.

SUBJECT: Requiring notice of paid military leave to certain officers and employees

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 7 ayes — S. King, Frank, Aycock, Blanco, Farias, Schaefer, Shaheen

0 nays

WITNESSES: For — (*Registered, but did not testify*: Melinda Smith, the Combined Law Enforcement Associations of Texas (CLEAT); Ray Lindner, National Guard Association of Texas; Jim Brennan, Texas Coalition of Veterans Organizations; Harrison Hiner, Texas State Employees Union)

Against — None

On — (*Registered, but did not testify*: Duane Waddill, Texas Military Department)

BACKGROUND: Government Code, sec. 437.202 entitles an officer or employee of the state, a municipality, a county, or another political subdivision who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team to a paid leave of absence under certain circumstances for not more than 15 workdays in a fiscal year.

The officer or employee also is entitled to carry forward between fiscal years up to 45 workdays of unused accumulated leave.

DIGEST: CSHB 445 would require the state, municipality, county, or other political subdivision to provide written notice of the number of workdays of paid leave that a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to each fiscal year and the number of days that person would be entitled to carry forward each year.

CSHB 445 would require notice to be given when an employee was hired or as soon as practicable after an officer's appointment or election.

On the request of an employee or officer, the state or a political subdivision would be required to provide a statement with the number of paid leave workdays the employee or officer claimed in that fiscal year. If provided, the statement also would have to include the net balance of unused accumulated leave for that fiscal year to which the officer or employee was entitled and the amount they were entitled to carry forward to the next fiscal year.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 445 would help to address the confusion regarding accumulated paid military leave that is common among employees and officers in the Texas Military forces, reserve components of the armed forces, and search and rescue teams. The bill would provide clarity by requiring that these individuals receive written notice of available paid leave when they are hired and upon request. Many military officers and employees are dissuaded from taking leave because they are unaware of the leave to which they are entitled. CSHB 445 would make the system more transparent and simple.

This bill also would prevent unintentional denial of paid training days because of employer confusion and lack of knowledge about the law. While information about other types of leave, such as sick leave, appears on an employee or officer's pay statement, available military leave is not included on those statements.

The type of data that would be provided in the required notice already is being collected. Because the data is centralized and available, an individual simply has to look it up and notify the affected officers and employees. This would not require any administrative costs or much time from the state or subdivisions required to supply the notice. The number of individuals affected by CSHB 445 would be very small, and it would not require much effort to provide notice of accumulated leave, which could be included with notices already provided.

OPPONENTS SAY:

CSHB 445 would not be the best way to address confusion about military leave. An easier way to inform these employees and officers of accumulated leave would be to require the comptroller to change the

reporting system to show these numbers on all pay statements.

NOTES:

CSHB 445 differs from the bill as filed in that it would change the notice requirement from an annual notice to notice upon initial employment, appointment, or election or upon request by the employee or officer.

SUBJECT: Designating May 24 as Lung Cancer Awareness Day

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 5 ayes — Guillen, Frullo, Larson, Murr, Smith

0 nays

2 absent — Dukes, Márquez

WITNESSES: For — Angie McClure, American Lung Association in Texas; (*Registered, but did not testify*: Cam Scott, American Cancer Society Cancer Action Network; Richard Hernandez, ResCare, Inc.; Melody Chatelle)

Against — None

DIGEST: HB 369 would designate May 24 as Lung Cancer Awareness Day. This designation would encourage Texans to learn about lung cancer, including the prevalence of lung cancer, the statistical risks of developing the disease, behavior that increases the risk of contracting lung cancer, ways to increase early diagnosis and treatment of the disease, and ways to reduce the prevalence of the disease. Lung Cancer Awareness Day would be regularly observed through appropriate programs and activities.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: HB 369 would promote awareness of lung cancer, which is the number-one cause of cancer deaths among both men and women in the United States — more than prostate, breast, and colon cancers combined. The five-year survival rate for lung cancer is 18 percent, but the survival rate can rise to 54 percent with early detection, which could be facilitated by more awareness of the disease.

OPPONENTS SAY:

No apparent opposition.